

Name & Address:
Philip M. Bowman
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CARLY E. SIMON

CASE NUMBER

CV09-9074 GW (PLAx)

PLAINTIFF(S)

v.

STARBUCKS CORPORATION

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S): STARBUCKS CORPORATION

A lawsuit has been filed against you.

Within 14 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint FIRST amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Philip M. Bowman, whose address is 575 Lexington Ave, 7th Floor, New York, New York 10022. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: April 22, 2010

By: _____
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

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18 Carly E. Simon

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 **CARLY E. SIMON,**

23 Plaintiff,

24 v.

25 **STARBUCKS CORPORATION,**

26 Defendants.

CASE NO.: CV09-09074 GW (PLAx)

AMENDED COMPLAINT AND JURY DEMAND

(Civil Code §§ 1709, 1710,
Tortious Interference with
Contract.)

27 **AMENDED COMPLAINT**

28 Plaintiff Carly E. Simon, by and through her undersigned counsel, states for her
Complaint as follows:

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Nature of the Action

1. This is an action for damages, attorneys’ fees and costs incurred in bringing this action. This action is based on a) Defendant’s fraudulent and deceitful concealment of material facts from the Plaintiff resulting in damage, and b) Defendant’s tortious interference with Plaintiff’s exclusive record licensing agreement with StarCon, LLC (d/b/a/ Hear Music).

The Parties

2. Ms. Simon is a citizen of the state of Massachusetts. Ms. Simon is an accomplished singer-songwriter with several gold and platinum records who has been recognized by the National Academy of Recording Arts and Sciences with two Grammy Awards, the American Academy of Motion Picture Arts and Sciences with an Oscar, and the Hollywood Foreign Press Association with a Golden Globe Award. Ms. Simon was inducted into the Songwriter Hall of Fame in 1994.

3. Defendant Starbucks Corporation (“Starbucks”) is a Washington corporation headquartered in Seattle, Washington.

Jurisdiction and Venue

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. 1332 (diversity of citizenship) and the matter in controversy exceeds the sum or value of \$75,000 exclusive of interests and costs.

5. Venue is proper under 28 U.S.C. 1391(a)(2) because a substantial part of the events giving rise to the claims asserted herein took place in this District.

Factual Background

A. Starbucks Launches Hear Music; Boasts that the Label is a Unique Innovator in the Marketing and Distribution of Music

6. Upon information and belief, in 2007 Starbucks and Concord Music Group (“Concord Music”) entered into an agreement to form a new record label, a limited liability corporation named StarCon LLC d/b/a Hear Music.

1 7. Concord Music is a record company that is primarily a Jazz label whose
2 distribution is primarily handled by Universal Music Group. Concord Music's
3 distribution strategy emphasizes sales through retail record stores and big box outlets.

4 8. Starbucks and Concord Music had a history of significant success with
5 their prior collaborations, including Ray Charles' album "Genius Loves Company"
6 which sold more than 5.5 million copies worldwide and Sergio Mendes' album
7 "Timeless" which sold approximately one million copies.

8 9. In a press release dated March 12, 2007, Starbucks publicly announced the
9 formation of the music label, Hear Music, with Concord Music as a "natural next step in
10 [Starbucks'] entertainment strategy" which will "forge relationships directly with artists
11 and distribute unique compelling recordings to the widest audience possible."

12 10. In the same release, Starbucks boasted that "Hear Music will provide a
13 powerful new way for great music to be marketed and distributed," and that "[w]ith
14 more than 13,000 locations in 39 countries and more than 44 million customer visits per
15 week, Starbucks offers a unique set of assets. Starbucks' distinctive customer loyalty
16 and trusted curatorial voice has had a significant impact on the music marketplace.
17 Along with the Starbucks retail footprint, Concord Music Group's exemplary label
18 platform will ensure broader global presence for all Hear Music artists."

19 11. The press release further stated that recordings would be distributed at
20 Starbucks locations as well as through traditional music channels.

21 12. Starbucks placed key executives from its entertainment division,
22 Starbucks Entertainment, at the helm of Hear Music. The President of Starbucks
23 Entertainment, Ken Lombard, served as President of Hear Music. The Vice President of
24 Content Development at Starbucks Entertainment, Alan Mintz, served the same role at
25 Hear Music.

26 13. On March 21, 2007, approximately two weeks after Starbucks announced
27 the formation of Hear Music, Hear Music announced the signing of its first artist, Paul
28 McCartney. In an article in BBC News, Glen Barros, president of Concord Music,

1 stated that recording artists should be attracted by the idea of a built-in audience in
2 Starbucks, and that “[t]his is a pretty powerful new platform, when you can reach 44
3 million customers per week through Starbucks stores.” In the same article, Mr.
4 McCartney expressed that he was impressed with Hear Music’s plan to use Starbucks’
5 13,500 retail outlets to sell the album.

6 **B. Starbucks Promises to Promote and Distribute Ms. Simon’s Record; Ms**
7 **Simon Agrees to Sign with Hear Music**

8 14. At approximately the same time that Starbucks announced the Hear Music
9 label, Ms. Simon was considering recording an album of new material. As of April
10 2007, Ms. Simon had recorded dozens of albums, including approximately forty albums
11 of original songs. Her last album was an album of covers, called *Into White* for
12 Columbia Records. *Into White* was released in 2007 and it became Billboard
13 Magazine’s “Hot Shot Debut” entering the chart at number 13.

14 15. Ms. Simon’s desire to record a new album generated great interest among
15 many prominent record labels. Hear Music expressed interest in Ms. Simon’s album in
16 April 2007.

17 16. Hear Music and Starbucks aggressively pursued Ms. Simon to sign with
18 the Hear Music label, highlighting their plan to use Starbucks’ 13,500 retail outlets to
19 sell albums, the release of her music through their online downloads store, and the
20 utilization of Hear Music coffee houses where customers can burn tracks onto CDs.

21 17. Starbucks itself explicitly told Ms. Simon that it would aggressively
22 promote and distribute her album through its stores if she signed with Hear Music.

23 18. Specifically, starting in April or May of 2007, Alan Mintz, Vice President
24 of Content Development at Starbucks Entertainment, in a series of telephone
25 conversations, represented to Ms. Simon that if she signed with Hear Music, Starbucks
26 would aggressively promote and distribute her album through its stores – giving her
27 album prime positioning in the stores. Mr. Mintz repeated this promise to her at an in-
28 person meeting in Martha’s Vineyard in August 2007.

1 19. Mr. Mintz was in a position to make these representations to Ms. Simon
2 on behalf of Starbucks because, as Vice President of Content Development at Starbucks
3 Entertainment, he had the authority to decide what records would be sold through
4 Starbucks stores.

5 20. Hear Music had no agreement with Starbucks that required Starbucks to
6 distribute the records of artists signed to the Hear Music label through Starbucks stores,
7 and Hear Music – as distinct from Starbucks – had no authority to represent to Ms.
8 Simon that it would distribute her record through Starbucks stores. Only Starbucks had
9 the ability to represent that it would distribute Ms. Simon’s records in its stores. Mr.
10 Mintz’s representations to Ms. Simon described above are thus directly attributable to
11 Starbucks.

12 21. Enticed by Starbucks’ promise to promote and distribute her record
13 through Starbucks’ vast network of retail stores, Ms. Simon forwent the opportunity to
14 sign with any of the more established record labels that had courted her, and entered
15 into an exclusive record license agreement with StarCon LLC d/b/a/ Hear Music dated
16 as of August 7, 2007, (“the Agreement”) to produce, market, and distribute an album of
17 original material (the “Album”).

18 22. The Agreement, which was signed on behalf of StarCon LLC by Ken
19 Lombard of Starbucks, specifically stated that Starbucks was a co-owner of StarCon
20 LLC. That was critical, because it meant that Starbucks had a financial stake in Ms.
21 Simon’s Album and a strong financial interest in exploiting its own retail network to the
22 fullest extent possible to ensure the widest possible distribution and the greatest possible
23 sales for her Album.

24 23. The Agreement also specifically required StarCon to prepare and
25 implement a marketing plan for the Album.

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1 **C. Starbucks Reaffirms Its Representations That Ms. Simon's Album Will Be**
2 **Marketed and Distributed Through Starbucks Stores.**

3 24. Ms. Simon successfully recorded her Album, *This Kind of Love*, with
4 thirteen tracks of original music.

5 25. In February 2008, in an interview with Billboard Magazine, Starbucks
6 Chairman Howard Schultz reaffirmed Starbucks' commitment to selling music and
7 touted Starbucks' "unique competitive advantage in the marketplace versus traditional
8 music stores."

9 26. On or about March 17, 2008, pursuant to the Agreement, Hear Music
10 delivered a marketing plan (the "Marketing Plan") to Ms. Simon, attached as Exhibit A
11 hereto. The Marketing Plan confirmed, among other things, that the Album would be
12 extensively marketed and distributed at "Starbucks Company-operated locations in the
13 U.S. and Canada," including Album placement and availability in over 7,000 Starbucks
14 stores, marketing on 1,000 Starbucks screens, and digital marketing and sales through,
15 among others, StarbucksEntertainment.com, iTunes, Facebook, MySpace, online
16 listening parties and Carly Simon fan websites.

17 27. The Marketing Plan contained an entire section titled "Starbucks Specific
18 Marketing" with detailed representations about how the Album would be marketed and
19 sold in Starbucks stores, including where and how the Album would be placed in stores,
20 that it would receive "Lead Feature" placement on the StarbucksEntertainment.com
21 home page, and that the Album would be played "overhead" in Starbucks stores.

22 28. These detailed representations, made just over a month before Starbucks
23 abruptly pulled out of Hear Music, can be attributed to directly to Starbucks, because
24 Hear Music could not have represented how Ms. Simon's Album would be promoted
25 and distributed in Starbucks' stores without Starbucks' consent. As described above,
26 Hear Music had no right to have its records promoted and distributed through Starbucks
27 stores.

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1 **D. Ms. Simon Prepares for An Album Launch Designed for Starbucks-**
2 **Centered Distribution.**

3 29. Based on Starbucks' representations, reaffirmed in the Marketing Plan,
4 that her Album would be promoted and distributed through Starbucks stores, Ms. Simon
5 began to prepare for the launch of her Album, which was scheduled for April 29, 2008,
6 with a series of promotions tied to distribution through Starbucks stores.

7 30. For example, on April 6, 2008, Ms. Simon, with the participation of Hear
8 Music, taped an electronic press kit featuring a recording of four songs from her Album
9 and an interview in which she stated that her Album would be widely available at
10 Starbucks coffee shops.

11 31. Ms. Simon also planned a special performance at Starbucks' New York
12 flagship store on Astor Place for April 30, the day after her Album was to be released.

13 **E. Starbucks Withdraws From Hear Music With No Prior Notice to Ms. Simon**

14 32. Unbeknownst to Ms. Simon, while Ms. Simon was preparing for the
15 launch of her Album and advertising its availability in Starbucks stores, Starbucks was
16 planning to exit the music business and terminate its participation in Hear Music.

17 33. On April 24, 2008, five days before the scheduled launch of Ms. Simon's
18 Album, Starbucks announced its withdrawal, effective immediately, from Hear Music
19 and terminated all of the key Starbucks employees affiliated with Hear Music, including
20 Ken Lombard and Alan Mintz (although Ms. Simon did not learn of this for several
21 days).

22 34. The precise date on which Starbucks decided to withdraw from Hear
23 Music is uniquely known to Starbucks, and will be revealed through discovery, but
24 upon information and belief Starbucks made the decision to withdraw well before it
25 announced the decision on April 24.

26 35. Prior to April 24, Starbucks did not make its decision to withdraw known
27 to anyone outside of Starbucks. None of the Starbucks employees affiliated with Hear
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1 Music, including Ken Lombard and Alan Mintz, were aware of Starbucks' withdrawal
2 plans until on or about April 24, when Starbucks executives arrived at Starbucks' Los
3 Angeles offices, escorted Mr. Lombard from the building, and told the other Starbucks
4 employees involved in Starbucks' music business that their services were no longer
5 needed.

6 36. Starbucks also did not inform its partner, Concord Music, of its decision
7 to withdraw until April 24. Hal Gaba, Concord Music's then Chairman and co-owner
8 (now deceased), stated in a letter to Ms. Simon dated November 3, 2008 that Starbucks'
9 withdrawal from Hear Music was "a shock to all of us at Concord."

10 37. Indeed, although it publicly announced the termination of its participation
11 in Hear Music on April 24, Starbucks still did not inform Ms. Simon, and Ms. Simon
12 remained unaware of the withdrawal for several days. In fact, Starbucks employees told
13 Ms. Simon the contrary – that it was "business as usual" – and encouraged her to
14 continue to prepare for the launch of her Album.

15 38. On April 30, 2008, Ms. Simon attended the event at Starbucks' flagship
16 store in New York City as planned, still unaware that Starbucks had withdrawn from
17 Hear Music. Starbucks employees (who had already been informed that they were
18 being terminated) attended the event, but still did not tell Ms. Simon that Starbucks was
19 no longer a participant in her record label. Ms. Simon performed songs from her Album
20 and held a signing afterwards. To Ms. Simon's surprise, her Album was not available at
21 the Starbucks cafe.

22 39. It was not until several days after her event on April 30 that Ms. Simon
23 discovered that Starbucks had withdrawn from Hear Music.

24 **E. Starbucks' Deceit Leaves Hear Music Unable to Perform its Contractual**
25 **Obligations and Causes Poor Record Sales.**

26 40. The withdrawal of Starbucks from Hear Music meant that in effect Ms.
27 Simon became signed to Concord Music. Concord Music, as Starbucks knew, had none
28 of the assets that constituted the reason for Ms. Simon's decision to enter into the

1 Agreement and, as Starbucks also knew, simply lacked the ability to effectively promote
2 her Album.

3 41. Moreover, by failing to disclose its plans to Ms. Simon, Starbucks made it
4 impossible to make alternative arrangements for the marketing and promotion of the
5 Album prior to its release. With no regard to the interests of Ms. Simon, whom it had
6 actively courted with promises of cutting edge marketing and distribution through its
7 retail stores, Starbucks left Hear Music in a state of chaos at the critical time of the
8 release of Ms. Simon's album.

9 42. If Starbucks had not concealed its plans, Ms. Simon would have worked
10 with Hear Music (now, in essence, Concord Music) to ensure that an alternate
11 promotional plan (albeit not the Starbucks marketing she had been promised) was in
12 place by the time of the Album's release, to ensure that a focused promotional team was
13 in place, and to avoid the chaos that Starbucks created at the time of her Album's actual
14 release. In addition, if necessary, she could have delayed the release date for the Album
15 to effectuate the foregoing, which was not possible given Starbucks' concealment of its
16 plans until five days before the release date.

17 43. If Starbucks had not concealed its plans from Ms. Simon, Ms. Simon also
18 would have focused her own promotional efforts on activities that were not tied to
19 distribution through Starbucks stores and she would not have wasted her time and
20 resources on promotional activities the effectiveness of which depended on effective
21 promotion and distribution by Starbucks.

22 44. By concealing its plans from Ms. Simon and Hear Music, Starbucks also
23 prevented Hear Music from adequately fulfilling its obligation under the Agreement to
24 execute and implement the Marketing Plan, which called for promotion and distribution
25 of the Album through Starbucks stores.

26 45. Even assuming Hear Music could have fulfilled its obligations under the
27 Agreement without the Starbucks Specific Promotion described in the Marketing Plan,
28 Starbucks, by concealing its plans until five days before the release of the Album, left

1 Hear Music with no time to formulate and execute an alternate marketing plan. As a
2 result, Hear Music did not fulfill its obligations under the Agreement.

3 46. Although Starbucks had fired her team and destroyed the key value in her
4 relationship with Hear Music, Ms. Simon did her best to try to promote the Album on
5 her own. During the first month of the Album's release alone, Ms. Simon performed at
6 a launch party in New York City, at the Philadelphia World Café Concert as well as at
7 several smaller venues, including at various Starbucks cafes. Ms. Simon also appeared
8 on television shows including the Today Show, Good Morning America, Rachel Ray,
9 Regis and Kelly, Jay Leno, Tavis Smiley, Ellen DeGeneres, the Michael Eisner show,
10 Howard Stern and the Michael Bloomberg show. Additionally, Ms. Simon engaged in a
11 series of print and radio interviews.

12 47. Despite Ms. Simon's efforts to promote her Album, she could not
13 overcome the handicap placed on the sales of her Album by Starbucks' actions.

14 48. During the first several months of the Album's release, a period critical to
15 an album's success, Hear Music did not have the Album available in a substantial
16 number of United States Starbucks stores. Additionally, Hear Music was unable to
17 market or make available the Album on Starbucks' vast digital networks, as it had
18 promised to do so.

19 49. It was not until June 2008 when Starbucks stocked the Album in
20 additional Starbucks stores in the critical markets of New York and Boston.

21 50. By June, the damage to Ms. Simon's Album had already been done. An
22 Album's success is primarily determined by its marketing and distribution within the
23 first months of an Album's release. By hampering Hear Music's promotional and
24 distribution abilities immediately prior to the release of the Album, Starbucks had in
25 effect poisoned Ms. Simon's Album.

26 51. Additionally, when Starbucks did finally stock additional Albums at its
27 stores, months after the Album's release date, unbeknownst to Ms. Simon, it priced Ms.
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1 Simon's Album at a mid-price sales point. By doing so, Starbucks stigmatized Ms.
2 Simon's Album as an album that could not be sold at full price.

3 52. As a direct result of Starbucks' actions, sales of the Album were far below
4 what was projected based on Ms. Simon's prior albums. Starbucks' actions have caused
5 irreparable damage as it is highly unlikely that an album can have any success in sales if
6 the marketing and distribution are ineffective within the first few months of its release.

7 **CLAIMS FOR RELIEF**

8 **First Cause of Action** 9 **California Civil Code §§ 1709 and 1710** 10 **(Deceit – Concealment of Material Facts)**

11 53. Plaintiff repeats and realleges the allegations set forth in paragraphs 1
12 through 52 as if fully set forth herein.

13 54. Starbucks concealed from Ms. Simon its intention to withdraw from the
14 operation of Hear Music and fire all of the key employees at Hear Music including its
15 President Ken Lombard and Vice President Alan Mintz.

16 55. Having induced Ms. Simon to enter into a record license agreement with
17 Hear Music by promising that Starbucks would distribute and promote her Album in its
18 stores, having stated that Starbucks was a co-owner of Hear Music, and having
19 reaffirmed its intention to promote and distribute Ms. Simon's Album in its stores at
20 least as late as March 2008, Starbucks was under a duty to disclose to Ms. Simon the
21 fact that it intended to withdraw from Hear Music.

22 56. Starbucks' intent to withdraw from the operation of the Hear Music label
23 was known only by Starbucks and was not reasonably discoverable by Ms. Simon.

24 57. Although Starbucks knew that it intended to withdraw from the operation
25 of Hear Music, it intentionally did not disclose this material fact to Ms. Simon.
26 Starbucks was aware that Ms. Simon entered into the Agreement with Hear Music
27 primarily for the benefit of Starbucks' marketing power and knew that its abrupt
28 departure just five days prior to the release of the Album would be devastating to the

1 launch of her Album and would severely damage sales of her Album. Starbucks
2 intended that Ms. Simon would rely on its failure to disclose this material information
3 and continue to engage in promotional activity directed to Starbucks.

4 58. If Ms. Simon had been made aware of Starbucks' intention to withdraw
5 from Hear Music prior to the public announcement made five days before the release of
6 the Album, Ms. Simon would have put in place an alternate plan for the marketing and
7 promotion surrounding the release of the Album and would not have wasted time and
8 resources on promotional activity tied to Starbucks. Given the short notice, however,
9 Ms. Simon was forced to proceed with the release without the aid of the Starbucks
10 marketing and distribution services that she had been promised, and in the midst of the
11 chaos within the operation of Hear Music that Starbucks had caused by its abrupt
12 withdrawal.

13 59. The conduct by Starbucks constitutes deceit with the intent to induce Ms.
14 Simon to rely on false information, and therefore violates Civil Code §§ 1709 and 1710.

15 60. As a direct, proximate result of Starbucks' concealment of a material fact,
16 Ms. Simon's Album was not effectively promoted and distributed at the critical time of
17 the Album's release. As a result, the Album suffered poor sales, far below what was
18 forecasted based on Ms. Simon's prior album sales. In addition, Ms. Simon wasted time
19 and resources on ineffective promotional activities tied to Starbucks. Ms. Simon is
20 entitled to compensatory and punitive damages.

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22 **Second Cause of Action**
Tortious Interference with Contract

23 61. Plaintiff repeats and realleges the allegations set forth in paragraphs 1
24 through 60 as if fully set forth herein.

25 62. On August 9, 2007, Ms. Simon entered in an exclusive record license
26 agreement with StarCon, LLC d/b/a Hear Music.

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1 63. Starbucks knew that Ms. Simon had entered into this Agreement. Mr.
2 Mintz, Vice President of both Starbucks Entertainment and Hear Music, was the
3 primary point of contact for Ms. Simon during and after the contract negotiations with
4 Hear Music and Ken Lombard, President of Starbucks Entertainment, signed the
5 Agreement on behalf of StarCon, LLC.

6 64. Starbucks knew that Ms. Simon’s central motivation for signing with Hear
7 Music was its unique ability to offer the marketing and distribution of Ms. Simon’s
8 Album through Starbucks’ vast network of retail and digital locations.

9 65. Starbucks fraudulently concealed from Ms. Simon its intentions to
10 terminate its participation in Hear Music and fire its key entertainment employees,
11 knowing that its actions would disrupt the contractual relationship between Ms. Simon
12 and Hear Music and severely interfere with Hear Music’s ability to satisfactorily
13 comply with its obligations under the Agreement to widely market and distribute Ms.
14 Simon’s Album, including its obligation under the Agreement to develop and execute a
15 marketing plan.

16 66. Starbucks’ fraudulent actions disrupted the contractual relationship
17 between Ms. Simon and Hear Music, because among other things, Starbucks’ fraudulent
18 actions prevented Hear Music from preparing and executing a marketing plan as it was
19 required to do under the Agreement. Specifically, as a result of Starbucks’ wrongful
20 conduct, including its fraudulent concealment, Hear Music could neither execute the
21 marketing plan it had prepared (which was dependent upon promotion through
22 Starbucks stores) nor formulate and execute a new plan in time for the Album’s release.

23 67. As a direct, proximate result of these acts by Starbucks, Ms. Simon has
24 been injured.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendant as follows:

On the First Cause of Action

- a. For general damages in an amount according to proof at trial, in an amount in excess of the jurisdictional minimum of this Court;
- b. For special damages in an amount according to proof at trial, in an amount in excess of the jurisdictional minimum of this Court; and
- c. For punitive damages.

On the Second Cause of Action

- d. For general damages in an amount according to proof at trial, in an amount in excess of the jurisdictional minimum of this Court;
- e. For special damages in an amount according to proof at trial, in an amount in excess of the jurisdictional minimum of this Court; and
- f. For punitive damages.

On all causes of action

- g. For costs;
- h. For reasonable attorney’s fees; and
- i. For such other relief as the Court may deem appropriate.

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: April 22, 2010

Respectfully submitted,

BOIES, SCHILLER & FLEXNER, LLP



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EXHIBIT A

